IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1190 OF 2002

Sou.Yashoda Vasat Dange,
Age: 28 years, Occ.: Household,
R/o. Tung, Taluka Miraj,
Dist. Sangli. .... Appellant.

Versus.

1. Shrikant @ Suryakant Krishna Patil,
   Age: 35, Occ.: Driver, r/o.
   Nerle, Taluka Walva, Dist.Sangli.

2. Dhondiram Dyanu Kadam,
   Age: 45,. Occ.: Agriculture,
   R.o. Nerle, Taluka Walva,
   Dist. Sangli.

3. New India Assurance Co.
   Shaniwar Peth, Talbhag, Karad,
   Dist. Satara. .... Respondents

Shri K.S.Patil for the Appellant.

Shri Shashikant Borade for Respondents Nos.1 and 2.

Shri Rajesh Behere for the Respondent No.3.

CORAM ; ABHAY S. OKA, J.

DATED : 2nd August, 2004.

ORAL JUDGMENT.

1. Admit. The Respondents waive service. Taken up for hearing immediately.

2. This appeal is for challenging the Judgment and

Award passed by the learned Member of the Motor Accident Claims Tribunal at Sangli in Motor Accident Claim Petition No.100 of 1991. The only dispute involved in this Appeal is as regards the quantum of compensation allowed by the learned Member.

3. The case made out in the application is that as a result of the accident the Applicant suffered injuries of left knee and on right part of the overhead. The case is that the Applicant has suffered injury to nose as a result of which nasal bone is fractured and the Applicant has suffered permanent disfigurement. The claim made is for Rs.43,200/-. A sum of Rs.5,000/- is claimed on account of deformity to the nose. A sum of Rs.5000/- is claimed on account of medical expenses. A sum of Rs.10,000/- is for mental pain and suffering and a sum of Rs.1200/- is for reimbursement of salary payable to the maid servant and a sum of Rs.5000/- on account of special diet. The learned Member of the Tribunal awarded total compensation of Rs.12,726/- with 12% interest. The learned Member awarded a sum of Rs.7000/- for mental shock, and Rs.5000/- under the head of deformity. The Tribunal awarded a sum of Rs.2426/- on account of medical expenses.

4. The learned Counsel appearing for the Appellant

relied upon the medical certificates issued which were filed on record. The first medical certificate is dated 26th June 1990 issued by Krishna Hospital and Medical Research Centre which records that the Appellant suffered the following injuries:

(1) Fracture nasal bones with nasal deformity.
(2) C.L.W.over fore head on Rt.side 3cm.x 2cm.
(3) Abrasion Lt.knee.
(4) Hematoma occipital region.

She has also produced a second medical certificate dated 28th July 1992. The said certificate is issued by Dr.Kishore Magdum which records that there was a slight deviation of nasal pyramid to the left (post trauma), which is permanent in nature. The learned Counsel submitted that the Appellant could produce the documentary evidence of the amount spent on medical treatment only to the extent of Rs.2426/-. He submitted that however, the Appellant's claim for Rs.5000/- on account of medical expenses cannot be disregarded. He submitted the Appellant is not expected to keep each and every small receipt or voucher of the expenses incurred by her on medical treatment. He pointed out that there is a clear deformity developed in the nose as a result of the accident. He pointed out that considering the

young age of the Appellant, the compensation of only Rs.5000/- could not have been awarded under the head of deformity.

5. The learned Counsel appearing for the Respondent No.3-Insurance Company pointed out that the the second certificate of Dr.Magdum which is relied upon by the Claimant/Appellant cannot be relied upon as it is issued in the year 1992 i.e. after a long period after the date of accident. He submitted that no case is made out for enhancement of compensation.

6. I have considered the evidence on record. As pointed out earlier, the injury certificate issued by Krishna Hospital records that there was fracture on nasal bone with nasal deformity. In so far as the second certificate issued by Dr.Magdum is concerned, it appears from the list at Exh.27 that the same was not admitted by the Opponents and therefore, it is not exhibited. Therefore, the second certificate dated 28th July 1992 cannot be read in evidence as it is neither proved nor admitted by the contesting opponents.

7. From the first certificate which is admitted in evidence by consent of the Opponents in the claim petition, it is very clear that there was a fracture of

nasal bone with nasal deformity. Therefore, the fact that there is a deformity developed in the nose cannot be disputed. The age of the Appellant at the time of accident was 27 years. Considering the age of the Applicant and the nasal deformity, compensation of Rs.5000/- granted on the ground of nasal deformity is on the lower side. Considering the injuries as reflected in the medical certificate at Exh.40 issued by Krishna Hospital and Medical Research Centre compensation of Rs.10,000/- on the said count ought to have been awarded. As regards the expenses incurred on medical treatment, in the cross-examination of the Appellant by the original Opponents Nos.1 and 2, a suggestion is given that only a sum of Rs.3000/- is spent on medical treatment. The cross-examination made by the original Opponents Nos.1 and 2 has been adopted by the original Opponent No.3 i.e. Respondent No.3 herein. Therefore, on this admitted position, the Claimant/Appellant is entitled to a sum of Rs.3000/- on account of expenditure incurred on medical treatment. Additional sum of Rs.5000/- deserves to be awarded on account of mental pain and suffering.

8. In the result the appeal partly succeeds. The Appellant is entitled to a total compensation of Rs.18,000/- in view of the discussion above. Therefore,

to this extent the Award needs to be modified.

9. Hence the following order:

(i) The Appeal is partly allowed with no order as to costs.

(ii) The Judgment and Award passed in Motor Accident claim Application No.100 of 1991 is modified and it is directed that the Appellant will be entitled to compensation of Rs.18,000/- with 12% interest per annum from the date of Claim Petition till the date of realisation. The Respondent No.3 is entitled to adjust the amount, if any paid as per the Award dated 1st August 2000. The Respondent No.3 is granted time of eight weeks to deposit the balance amount.

(iii) Certified copy expedited.

Judge.